

Decision 05-04-043 April 21, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Nick J. Constantinides,

Complainant,

vs.

Bear Valley Electric Services, a Division of
Southern California Water Company,

Defendant.

(ECP)

Case 04-10-020
(Filed October 15, 2004)

Nick J. Constantinides, for himself, complainant.

Keith Switzer, for Bear Valley Electric Services, a
Division of Southern California Water Company,
defendant.

DECISION DENYING RELIEF, IN PART

Complainant seeks \$5,000 in damages resulting from defendant's tree trimming activity. Defendant denied liability. A public hearing was held February 17, 2005.

Complainant testified that he has a vacation home at 41596 Tahoe Drive, Big Bear Lake, California. He said that on or about July 1, 2003 a team of defendant's power line maintenance men, in his absence, trespassed on 41596 Tahoe Drive, without notice, contact, or communication with him, reached five feet beyond his fence, and mutilated a prominent landscape tree by chopping a 10' to 12' section off its top. This single act removed 10 years of tree growth. Complainant asserts that this was done with reckless disregard for his

privacy and property rights. This tree is one of only two trees on the lot and it is positioned in a prominent location of the landscape. The damage ruined the tree's natural form, defaced canopy blend, and lowered property value.

Complainant said that defendant sacrificed his landscape tree to reduce labor costs by extending for many years the interval between prunings.

Complainant points out that the Commission's Rules for Overhead Electric Construction (GO 95) require that a good faith effort be made to obtain permission from the homeowner by written communication or, at a minimum, a personal contact, to access private property in order to trim or remove vegetation to clear power lines. Bear Valley attempted none. Since Bear Valley has the address of complainant by virtue of monthly billings, Bear Valley's intrusion into his fenced property is a clear violation of his privacy and property rights.

Defendant admits that on or about July 1, 2003, it trimmed one pine tree located at 41596 Tahoe Drive. Defendant denies that complainant has suffered any damage by reason of any act or omission of defendant. Defendant asserts that the tree was trimmed as part of defendant's routine maintenance, and was trimmed in accordance with GO 95, Rule 35. The pine tree located on the property was in contact with defendant's primary electricity conductor. The tree was trimmed back to approximately six feet from the high voltage (2,400 volts) conductor located at the property.

GO 95, Rule 35, provides that "[w]here overhead wires pass through trees, safety and reliability of service demand that tree trimming be done in order that the wires may clear branches and foliage by a reasonable distance. The minimum clearances established in Table 1 ... shall be maintained." Under the Rule, the minimum radial clearance to be established at time of trimming between vegetation and the energized conductor and associated live parts, for

any conductor of a line operating at 2,400 volts or more, is four feet. Rule 35 further states that “vegetation management practices may make it advantageous to obtain greater clearances than those listed.” (Rule 35, Appendix E.)

Defendant states that it prudently trimmed the one pine tree back six feet from the conductor in the interests of safety and reliability.

We dismiss complainant’s cause of action for damages. This case is within the rule of *Bereczky v. SCE*, D.96-03-009, 65 CPUC 2d 145, where we set forth these facts:

“The complaint alleges that SCE ‘excessively trimmed spruce and pine trees’ on Bereczky’s property on November 17, 1994. He seeks various remedies in response to the alleged harm which resulted from these trimming activities, and particularly for the topping of a bluish spruce tree which he claims is located about a three-foot distance from the alignment of SCE’s electric transmission wires overhead.” (65 CPUC 2d at 146.)

We dismissed, stating:

Even if SCE’s actions could be construed as a violation of Rule 35, we have no power to award money damages for injury to Bereczky’s property, or for emotional distress. (65 CPUC 2d at 147.)

...

The Commission has consistently held that it may not award damages on the basis either of tort or contract. See, e.g., *Schumacher v. Pacific Tel. & Tel. Co.* (1965) 64 CPUC 295, and cases therein cited.” (65 CPUC 2d at 148.)

However, we are concerned with defendant’s failure to give notice to complainant of its intent to trim complainant’s tree. Such notice is required by the Rule and would have given complainant the opportunity to consult with

defendant on methods to be used in trimming his tree. The Rule is clear: Rule 35 (GO 95) Tree Trimming, Exceptions:

2. Rule 35 requirements do not apply where the utility has made a 'good faith' effort to obtain permission to trim or remove vegetation but permission was refused or unobtainable. A 'good faith' effort shall consist of current documentation of a minimum of an attempted personal contact and a written communication, including documentation of mailing or delivery. However, this does not preclude other action or actions from demonstrating 'good faith.' If permission to trim or remove vegetation is unobtainable and requirements of exception 2 are met, the utility is not compelled to comply with the requirements of exception 1.

Defendant's witness testified that defendant made no effort to communicate with complainant about the tree trimming. And, of course, defendant had complainant's address. Defendant violated Rule 35 by making no attempt to communicate with complainant regarding tree trimming. Defendant is admonished that failure to comply with the Commission's General Orders is a violation which could result in fines or other penalties. (Pub. Util. Code § 2101, et seq.)

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Robert A. Barnett is the assigned Administrative Law Judge in this proceeding.

O R D E R

IT IS ORDERED that:

1. The relief requested by complainant is denied.
2. Defendant is admonished to comply with the Commission's General Orders.

3. Case 04-10-020 is closed.

This order is effective today.

Dated April 21, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
Commissioners